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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,225	07/15/2003	Lisa J. Cox	49278.0001.8	8523
26158	7590	09/10/2004	EXAMINER	
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC P.O. BOX 7037 ATLANTA, GA 30357-0037			BENNETT, GEORGE B	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/620,225	COX ET AL.
	Examiner	Art Unit
	G. Bradley Bennett	2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 July 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "instructions" (claim 17) and the "video format" (claim 18) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette, Jr. et al. (Schuette), in view of White.

4. Schuette discloses the invention as substantially as claimed where: **58** is a substantially transparent plate; **64** is a level on the plate which also functions as a handle; and the tool is in an orientation for marking a polygon, which is a rectangle.

However, Schuette does not disclose a separate handle, second level or series of graduated markings on the sides as claimed. White discloses how a handle **108** may be put on a tool separately from levels for the purpose of easily manipulating a tool. White discloses how a measuring and marking tool can be provided with two levels for the purpose of checking to see if the tool is level in a plurality of orientations. White also discloses how graduations may be used on two edges for the purpose of making measurements using either of the two edges. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a handle as taught by White in conjunction with the device of Schuette for the purpose of easily manipulating the Schuette device. It also would have been obvious to one of ordinary skill in the art at the time the invention was made to use plural levels as taught by White in conjunction with the Schuette device for the purpose of using the Schuette device in a plurality of orientations. Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use graduations as taught by White in conjunction with the Schuette device to permit a person to make measurements with the Schuette device.

5. Claims 8-10 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette and White in view of Barr.

6. Schuette and White disclose the invention substantially as claimed. However, neither disclose the marking material as claimed. Barr discloses how a marking material **14** can be used with ink or paint for the purpose of printing a pattern on a surface. Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to use making materials as taught by Barr in conjunction with the Schuette and White devices for the purpose of using the combined device to print patterns on a surface.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette and White in view of Johansen et al. (Johansen).

8. Schuette and White disclose the invention substantially as claimed. However, neither disclose a concave surface as claimed. Johansen discloses how a concave surface can be used with measuring device for purpose of elevating a substantial part of the device above a surface (see FIG 2, for example). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a concave surface as taught by Johansen in conjunction with the Schuette and White devices for the purpose of using the combined devices to elevate the tool above a surface.

9. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette and White in view of Trane et al. (Trane).

10. Schuette and White disclose the invention substantially as claimed. However, neither disclose a handle specifically as claimed. Trane discloses how a handle **15** with a finger recess can be used with a measuring device for the purpose of holding the measuring device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the handle as taught by Trane in conjunction with the Schuette and White devices as an alternative means for holding the combined device.

11. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette and White in view of Greer.

12. Schuette and White disclose the invention substantially as claimed. However, neither disclose the diamond shape or two plate portions as claimed. Greer discloses how two plates may be adjustably connected to form diamond, square or rectangular patterns. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the plates as taught by Greer in conjunction with the Schuette and White devices for the purpose of rendering the combined device more versatile and adjustable.

13. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette and White in view of Innis.

14. Schuette and White disclose the invention substantially as claimed. However, neither disclose the instruction materials as claimed. Innis discloses how video instructions may be used for the purpose of assembling something (see col. 3, ll. 43-46). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the instructions as taught by Greer in conjunction with the Schuette and White devices to provide instructions for how to use the combined device.

15. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette, White and Innis as applied to claim 17 above, and further in view of Barr.

16. Schuette, White and Innis disclose the invention substantially as claimed. However, none disclose marking material as claimed. Barr discloses how a marking

material 14 can be used with ink or paint for the purpose of printing a pattern on a surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use making materials as taught by Barr in conjunction with the Schuette, White and Innis devices for the purpose of using the combined device to print patterns on a surface.

Response to Arguments

17. Applicant's arguments with respect to claims 1, 3, 6 and 11 have been considered but are moot in view of the new ground(s) of rejection.
18. Applicant's further arguments with respect to claims 2, 4, 5, 7-10 and 12-26 have been fully considered but they are not persuasive. The Applicant's arguments focus on whether or not there is motivation to combine the references in the manner as set forth above. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, all the prior art references are known measuring and leveling tools. In the measuring and leveling arts, it is known to combine features in the manners as set forth in the above rejections to render a tool more versatile. For example, it is known to add one or more bubble levels

to a device so that the device may be used in different planes. As another example, it is known to duplicate scales on a tool so that measurements can be taken with different edges of the device. The claimed combinations rejected above are merely further examples of adding known features to a "basic" device for the purpose of rendering the basic device more versatile and to add features to basic measuring devices is known to those in the art. Therefore, the rejections above are proper.

19. In the previous Office Action, claim 19 was improperly rejected due to a typographical error. As such, this action is non-final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Bradley Bennett whose telephone number is 571.272.2237. The examiner can normally be reached on M-TH 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on 571.272.2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 2859



G. Bradley Bennett
Primary Examiner
Art Unit 2859

gbb
27 APR 2004